IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2015

CORAM:

THE HON'BLE MR. JUSTICE R. MAHADEVAN

W.P.No.29054 of 2015
&
M.P.No.1 of 2015

M/s.Shan Holiday Inn Pvt. Ltd.
Rep. by its Managing Director
NO.85 Poonamalle High Road
Koyambedu
Chennai 600 107 ...Petitioner

v.

1 The Assistant Commissioner (CT)
Koyambedu Assessment Circle
Chennai

2 The Branch Manager
Canara Bank
Thambu Chetty Street,
Chennai ...Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus, calling for the records comprised in proceedings Rc.No.2576/2015/A4 dated 9.9.2015 on the file of the 1st respondent, quash the same and consequently direct the 1st respondent to raise the order of Attachment in Order under Form U dated 4.2.2015 made in PDL.1/2013-14/A3.

For Petitioner : Mr.K.Kumerash Babu

For Respondents : Mr.S.Manoharan Sundaram,
Addl. Govt. Pleader (T) - for R1

O R D E R

Heard the learned counsel for the petitioner and the learned Additional Government Pleader (Taxes) for the 1st respondent and with their consent, the main writ petition itself is taken up for hearing.

2. This writ petition has been filed challenging the impugned proceedings of the 1st respondent in Rc.No.2576/2015/A4 and Form U dated 4.2.2015 addressed to the second respondent.

3. It is the case of the petitioner that the petitioner Company is carrying on the business of hotel industry and registered as a dealer with the 1st respondent under the provisions of the TNVAT Act and also under the Tamil Nadu Tax on Luxuries Act, 1981 . The petitioner hotel has been paying all the necessary taxes and other dues to the appropriate authorities including the 1st respondent. Due to the decreased business during the relevant point of time, the deponent, who has been managing the business at Chennai, had gone to Goa to manage his other business interest, during which period, the Manager, who was entrusted with the running of the business, had misappropriated the fund and made false accounts as if he had paid appropriate taxes including taxes under TNVAT Act and Luxury Tax Act. The non payment of tax to the 1st respondent came to the knowledge of this deponent only when demand notices were issued and thereafter, the petitioner had verified all the accounts and had taken necessary steps to make the payments. While so, the 1st respondent issued a notice dated 3.12.2014 claiming that the petitioner hotel was in total arrears of a sum of Rs.53,39,564/- out of which, only Rs.13,00,000/- was paid and that the petitioner is still in arrears of Rs.40,39,564/- and called upon the petitioner to pay the same forthwith, with the threat of attachment in default. Accordingly, the 1st respondent issued a letter dated 4.2.2015 to the 2nd respondent under Form U under Rule 9(4) of the TNVAT Rules, 2006. In the mean while, the Tahsildar, Aminjikarai Circle had issued a notice under the Revenue Recovery Act calling upon the petitioner to pay a sum of Rs.34,20,564/- forthwith and immediately, the petitioner had made some payments towards the arrears. On 18.6.2015, the 1st respondent issued a further notice claiming balance sum of Rs.28,15,350/- along with interest and the petitioner on 3.7.2015 and 21.7.2015 paid a sum of Rs.2,00,000/- and Rs.2,10,000/- respectively. Hence, as of now, the petitioner is in arrears of a sum of Rs.24,05,350/-.

4. The learned counsel for the petitioner submitted that the petitioner is effecting periodical payments despite acute financial crunch, which the respondent failed to consider and in spite of the specific request, the respondent refused to lift the same, causing great hardship to the petitioner. The learned counsel for the petitioner also submitted that the petitioner is undertaking to clear the arrears if reasonable installments are permitted.

5. Heard both sides.

6. There is no dispute with regard to the arrears. The learned counsel for the petitioner filed a calculation memo before this court today, which reads as follows:-

A	Notice Dated 18.6.2015 balance	Rs.28,15,350/-
B	Thereafter paid	Rs.4,10,000/-
C	Hence balance as on March 2015	Rs.24,05,350/-
D	Arrears as on Aug 2015 for AY 2015-16	Rs.8,19,400/-
	As on August 2015, total outstanding	Rs.32,24,750/-

7. At this juncture, the learned counsel for the petitioner would submit that since the bank attachment has already been effected, the petitioner is not in a position to operate his bank account and hence, he could not make further payments. Hence, he prayed that the petitioner may be permitted to operate the bank account and for payment of the remaining tax amount, sufficient time may also be granted to the petitioner.

8. Considering the facts and circumstances of the case and on considering the submissions made by the learned counsel on either side, this Court is of the view that the petitioner may be permitted to operate the bank account on payment of certain amount and sufficient time may also be given for paying the balance tax amount.

9. In view of the above, on payment of a sum of Rs.8,19,400/- (Rupees eight lakhs nineteen thousand and four hundred only) within a period of ten days from the date of receipt of the copy of this order, the attachment of petitioner's bank account made in the impugned order dated 09.09.2015 shall be withdrawn forthwith and the petitioner be permitted to operate the bank account. Further, the

petitioner shall continue to pay the remaining amount of Rs.24,05,350/- (Rs.32,24,750 - Rs.8,19,400/-) in six equated monthly installments on or before 5th of every succeeding month, commencing from 1st November 2015. Any violation in this regard will entitle the Assessing Authority, the 1st respondent herein, to proceed for recovery of the entire arrears.

The writ petition is disposed of with the above directions. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

Rj

To

1 The Assistant Commissioner (CT)
Koyambedu Assessment Circle
Chennai

2 The Branch Manager
Canara Bank
Thambu Chetty Street, Chennai

1 CC to Spl. Government Pleader, SR.No. 51368

W.P.No.29054 of 2015 &
M.P.No.1 of 2015

SVI (CO)
PSI (07.10.2015)